

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION**

THIS DOCUMENT RELATES TO:

ALL ACTIONS

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) MDL No. 1:13-md-2419-RWZ
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**RESPONSE OF JOHN MATHIS, M.D.; ROBERT O'BRIEN, M.D.;
AND IMAGE GUIDED PAIN MANAGEMENT TO
PLAINTIFFS' STEERING COMMITTEE'S JUNE 11, 2014
MOTION FOR ENTRY OF CASE MANAGEMENT ORDER**

COME NOW John Mathis, M.D.; Robert O'Brien, M.D.; and Image Guided Pain Management, P.C. (collectively "IGPM"), by counsel and state as follows in response to the Plaintiffs' Steering Committee's Motion for Entry of Case Management Order (Docket No. 1188):

1. IGPM agrees with the Motion that its physicians do not desire to be subjected to 151 more depositions and is certainly willing to agree to use of the depositions of Drs. Mathis and O'Brien already taken and answered written discovery for the remaining 151 Virginia cases in which they or IGPM are named defendants; however, IGPM is not in the position of entering into such an agreement for other defendants. IGPM will work with counsel to avoid duplicative discovery and is also willing to participate in any additional discovery to ensure fair and just resolution of these cases.

2. IGPM's agreement regarding duplicative discovery only extends to use of discovery of IGPM in other cases and not to use of pleadings, orders, opinions or other papers. Because the complaints in these cases are not identical, because the complaints do not all assert the same causes of action, and because the answers to these varied complaints are made by the attorneys and not binding on IGPM as sworn statements of fact, it is impossible for IGPM to agree to their use in all of these varied cases. Likewise, the court orders and opinions capture the same varied nature of the complaints, the causes of action and the responses. It would appear difficult to apply the court orders and opinions to all of the 151 plus cases.

3. IGPM's agreement regarding duplicative discovery did not extend to placing the burden on defendants to provide the Plaintiffs' Steering Committee with copies of all documents and things generated in the Virginia litigations in which it is a named defendant. The pleadings in these cases are publicly available, are being shipped to Boston for use by the Plaintiffs' Steering Committee pursuant to this Court's June 5, 2014 Order, and are in the possession of the plaintiffs. The responses to written discovery are already in the possession of the plaintiffs in these cases, as is made apparent by Exhibit A to the Memorandum in Support. That Exhibit was prepared with detailed knowledge of the discovery conducted and its contents. In the spirit of reducing duplicative work, this request should be denied.

FOR THE REASONS STATED, John Mathis, M.D.; Robert O'Brien, M.D.; and Image Guided Pain Management, P.C. respectfully request the Court to deny the Plaintiff's Steering Committee's request that the defendants provide to them copies of documents either already in the plaintiffs' possession or available through the court

system and to deny application of pleadings, orders and opinions to all cases to the extent that they do not set forth the same causes of action, facts and defenses.

JOHN MATHIS, M.D.; ROBERT
O'BRIEN, M.D.; AND IMAGE GUIDED
PAIN MANAGEMENT, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2014 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record.

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